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In re Application of : **OFFICE OF PETITIONS**
Donald Bruns :
Application No. 10/045,459 : **DECISION ON PETITION**
Filed: 7 November, 2001 :
Atty Docket No. 1092-PA435 :

This is a decision on the petition filed on 26 September, 2005, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 16 August, 2003, for failure to timely respond to the Office action mailed on 15 May, 2003, requiring restriction and/or election, which set a one (1) month shortened statutory period for reply. No extensions of time in accordance with 37 CFR 1.136(a) were obtained. A response to the restriction requirement was filed on 3 November, 2003 (certificate of mailing 30 October, 2003), but was untimely

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

because it was not accompanied by an extensions of time. A Notice concerning the fee deficiency was mailed on 21 November, 2003.² Notice of Abandonment was mailed on 19 October, 2004.

Petitioner has filed an election as the response to the restriction requirement.

The address on the petition is different than the address of record. A copy of this decision is being forwarded to the decision in the petition. All future correspondence will be mailed solely to the address of the record.

This application is being referred to Technology Center Art Unit 2873 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
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² It appears that the fee deficiency notice was returned to the Office as undeliverable on 10 December, 2003. Additionally, the Notice of Abandonment was returned as undeliverable on 10 November, 2004.